United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

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Court of Appeals, District of Columbia

JANUARY TERM, 1910.

No. 2112.

701

No. 8, SPECIAL CALENDAR.

AULICK PALMER, MARSHAL OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA, APPELLANT,

vs.

BENJAMIN LENOVITZ.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED JANUARY 26, 1910.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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INDEX.

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[5141]

In the Court of Appeals of the District of Columbia.

No. 2112.

AULICK PALMER, Marshal of the United States for the District of Columbia, Appellant,
vs.
BENJAMIN LENOVITZ.

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a Supreme Court of the District of Columbia.

Habeas Corpus. No. 514.

Ex Parte BENJAMIN LENOVITZ.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 *Petition for Writ of Habeas Corpus.*

Filed December 22, 1909.

In the Supreme Court of the District of Columbia.

Habeas Corpus. No. 514.

Ex Parte BENJAMIN LENOVITZ.

To the Honorable Daniel Thew Wright, Associate Justice of the Supreme Court of the District of Columbia:

The petition of Benjamin Lenovitz respectfully represents:

1. That he is a citizen of the United States and a resident of the District of Columbia.

2. That he is illegally restrained of his liberty and held in custody by Aulick Palmer, United States Marshal, under the following circumstances:

On or about the 1st day of October, 1909, an information was filed in the Police Court of the District of Columbia by the United States

Attorney in the name of United States against this Petitioner, charging him with keeping a Disorderly House.

Petitioner appeared, plead Not Guilty, and demanded a Jury Trial which was accorded him.

The trial took place on the 12th day of November, 1909 and resulted on the 14th day of November, 1909, in the rendition of a verdict of guilty as charged against petitioner.

On the 16th day of November, 1909, petitioner filed a motion for a new trial which was overruled on November 26th, 1909.

2 A Bill of Exceptions then tendered was rejected by the trial Judge as filed too late and an unsuccessful application for a Writ of Mandamus to require the trial Judge to consider and act on the Bill of Exceptions was made.

Thereafter petitioner was notified to appear on December 14th, 1909, for sentence.

On that day he filed a motion to quash the information on the following grounds:

That the Act of Congress to establish the Police Court, 16 Statutes 153, Section 1042, Revised Statutes D. C., under which it is claimed that the Court was created is unconstitutional and void, because: The Constitution of the United States article 3 Section 1, provides among other things, that the Courts of the United States, shall be held by Judges appointed, and who shall hold their offices, during good behavior, whereas the Judge claiming the right to preside in this cause, was not so appointed, but was appointed and commissioned, for a definite term of years.

That the authority claimed by the Attorney for the United States, to file the information herein, and to prosecute the same is invalid, and therefore does not exist, because the Act which it is claimed, created this Court, is for the reason above stated, invalid and void.

That the authority claimed to prosecute the defendant for the offence charged in the information, is invalid, and so does not exist, because the offence charged is not an offence against the peace and dignity of the United States, but of the District of Columbia.

That for the reasons aforesaid, the Court designated as
3 the Police Court of the District of Columbia, has no legal existence, and that the prosecution sought to be conducted under said information, in said Court, is coram non judice and without authority.

That the authority claimed to be exercised as aforesaid is so claimed, under the United States, and for the reasons stated does not nor does any part thereof, validly exist.

That the offence charged in the information if an offence at all, is an offence at common law, and the term of imprisonment in case of conviction may be more than one year, in the discretion of the Court.

Such being the case, the power and authority claimed under the United States, to prosecute said charge in the Police Court is invalid and does not exist, because the Code, Section 934, provides among other things:

"When the punishment of an offence may be imprisonment for

more than a year, the prosecution shall be in the Supreme Court of the District of Columbia."

That if this case is further proceeded with in this Court the defendant will be deprived of both his liberty and his property without due process of law, and in violation of article 5 of the Amendments to the Constitution.

This motion was overruled and exceptions reserved.

Petitioner being then called on to state what if anything he had to say why sentence should not be pronounced against him, submitted the following objections to the imposition of any sentence upon him in said cause:

The said objections were identically the same as the grounds hereinbefore set forth upon which the aforesaid motion to quash was made.

4 These objections were all overruled and exceptions reserved.

Sentence was then imposed of six months' imprisonment in the jail of said District of Columbia, three hundred dollars fine and a further term of six months imprisonment in said jail in default of payment of said fine.

To the imposition of said sentence an exception was reserved.

Thereafter upon a Bill of Exceptions showing said exceptions reserved December 14th, 1909, an application for a Writ of Error was made to the Chief Justice of the Court of Appeals of the District of Columbia and was denied.

In his opinion denying the application for the Writ, Mr. Chief Justice Shepard uses the following language.

"The questions raised go to the jurisdiction of the Court to entertain the prosecution.

If the Court was without jurisdiction to try the case—its judgment may be attacked on the ground through a petition for a Writ of Habeas Corpus to one of the Justices of the Supreme Court of the District.

A proceeding in that manner would present the questions raised, in a direct and effective way, and in case of adverse judgment, the petitioner will have an appeal to this Court as a matter."

3. Petitioner thereupon according to the tenor of his recognizance appeared in the Police Court on December 22, 1909, and was committed by the Court to and is now in the Custody of Aulick Palmer, Marshal aforesaid pending a commitment to be issued in said

5 cause on said sentence (the term of imprisonment having in the meantime been reduced by the Court to three months.)

4. Petitioner avers that for the reasons set forth in said Motion to Quash and objections to the imposition of sentence hereinbefore set forth the said Court has deprived petitioner of his liberty without due process of law; that the said Court was wholly without jurisdiction to try the aforesaid cause and that said alleged sentence is null and void for the following reasons:

That the Act of Congress to establish the Police Court, 16 Statutes 153, Section 1042, Revised Statutes D. C. under which it is claimed that the Court was created is unconstitutional and void, because: The Constitution of the United States Article 3 Section 1 provides

among other things, that the Courts of the United States, shall be held by Judges appointed, and who shall hold their offices during good behavior, whereas the Judge claiming the right to preside in this cause, was not so appointed, but was appointed and commissioned, for a definite term of years.

That the authority claimed by the Attorney for the United States, to file the information herein, and to prosecute the same is invalid, and therefore does not exist, because the Act which it is claimed created this Court, is for the reason above stated invalid and void.

That the authority claimed to prosecute the defendant for the offence charged in the information, is invalid, and so does not exist, because the offence charged is not an offence against the peace and dignity of the United States, but of the District of Columbia.

That for the reasons aforesaid the Court designated as the
6 Police Court of the District of Columbia, has no legal existence, and that the prosecution sought to be conducted under said information in said Court, is coram non judice and without authority.

That the authority claimed to be exercised as aforesaid is so claimed, under the United States, and for the reasons stated does not nor does any part thereof validly exist.

That the offence charged in the information if an offence at all, is an offence at common law, and the term of imprisonment in case of conviction may be more than one year, in the discretion of the Court.

Such being the case, the power and authority claimed under the United States, to prosecute said charge in the Police Court is invalid and does not exist, because the Code, Section 934, provides among other things:

"When the punishment of an offence may be imprisonment for more than a year, the prosecution shall be in the Supreme Court of the District of Columbia."

That if this case is further proceeded with in the Police Court the defendant will be deprived of both his liberty and his property without due process of law, and in violation of Article 5 of the Amendments to the Constitution.

Petitioner therefore prays.

1. That the Writ of Habeas Corpus may issue to said Aulick Palmer, Marshal as aforesaid, returnable forthwith, requiring him to produce in open Court before Your Honor the body of your
7 petitioner, to the end that he may do and receive what shall then be adjudged in this matter, and that he may be relieved of the aforesaid illegal restraint of his liberty.

2. That such further order may be made herein as may be necessary.

BENJAMIN LENOVITZ.

CAMPBELL CARRINGTON,
JOHN RIDOUT,
For Petitioner.

I do solemnly swear that I have read the foregoing petition by me subscribed, and know the contents thereof, that the facts therein stated upon my personal knowledge are true, that the facts therein stated upon information and belief, I believe to be true.

BENJAMIN LENOVITZ.

Subscribed and sworn to before me this 22nd day of December, A. D. 1909.

[SEAL.]

EDMUND CARRINGTON,
Notary Public, D. C.

(Indorsed.)

Let the Writ issue as prayed, returnable before me forthwith.

WRIGHT,
Associate Justice.

8

Writ of Habeas Corpus.

Issued December 22, 1909.

In the Supreme Court of the District of Columbia.

No. 514.

In the Matter of the Petition for Writ of Habeas Corpus for BENJAMIN LENOVITZ.

The President of the United States to Aulick Palmer, U. S. Marshal, Greeting:

You are hereby commanded to have the body of Benjamin Lenovitz detained under your custody, as it is said, together with the day and cause of his being taken and detained, by whatever name he may be called in the same, before the Honorable D. T. Wright one of the Justices of the Supreme Court of the District of Columbia, in Circuit Court No. 1, United States Court-House, City of Washington (immediately), after the receipt of this writ, to do and receive whatever shall then and there be considered of in his behalf, and have then and there this writ.

Witness, the Honorable Harry M. Clabaugh, Chief Justice of said Court, the 22d day of Dec'r, A. D. 1909.

[SEAL.]

J. R. YOUNG, *Clerk,*
By F. W. SMITH,
Assistant Clerk.

Marshal's Return.

Service hereof accepted this 22nd day of December, 1909.

AULICK PALMER,
U. S. Marshal,
By W. B. ROBINSON,
Deputy Marshal.

9 *Return to Writ of Habeas Corpus.*

Filed December 29, 1909.

In the Supreme Court of the District of Columbia.

Habeas Corpus. No. 514.

In re BENJAMIN LENOVITZ.

Aulick Palmer, United States Marshal for the District of Columbia, respondent, for return to the writ of habeas corpus served upon him in the above entitled cause, for return to said writ, respectfully presents to the Court as follows:

1. In obedience to the said writ of habeas corpus, the respondent has now here before this Court the body of the petitioner, Benjamin Lenovitz, and has also the said writ.

2. Respondent further states that the said Benjamin Lenovitz is held in custody of this respondent for delivery to the Warden of the United States Jail of the District of Columbia, by virtue of a certain writ of commitment dated the twenty-second day of December, A. D. 1909, and issued by the Honorable Ivory G. Kimball and the Honorable Alexander R. Mullowny, Judges of the Police Court of the District of Columbia, the said Benjamin Lenovitz having been convicted in the Police Court of the District of Columbia upon the charge of keeping a disorderly house, and sentenced to be imprisoned ninety days in jail, and to pay a fine of three hundred dollars, and in being in default to be imprisoned one hundred and eighty days in jail additional, to take effect from the date of the arrival of the said Benjamin Lenovitz at the United States Jail of the
10 District of Columbia, the said conviction being had on information of one McGill Grove for "Disorderly House," in United States case Number 166,001, and said commitment being issued thereon.

3. Your respondent holds the said petitioner by virtue of the aforesaid commitment, a true copy whereof is hereto appended, marked Exhibit A, and prayed to be taken and considered as part hereof.

This respondent also brings with him the said writ, which is hereto appended and marked Exhibit B.

AULICK PALMER,
United States Marshal for the District of Columbia.

DISTRICT OF COLUMBIA, *ss:*

I, Aulick Palmer, first being duly sworn, on oath say that I am United States Marshal for the District of Columbia; that I have read the foregoing return by me subscribed and know the contents thereof; that the matters and things therein stated of my own knowledge are true, and those stated on information and belief I believe to be true.

AULICK PALMER.

Subscribed and sworn to before me this 29th day of December 1909.

JOHN R. YOUNG, *Clerk.*

11

EXHIBIT "A."

Filed December 29, 1909.

In the Police Court of the District of Columbia.

166,001.

DISTRICT OF COLUMBIA,
County of Washington, To wit:

To the Warden of the Jail of the District of Columbia:

Receive into your custody the body of Benjamin Lenovitz herewith sent by the Police Court, brought before said Court charged upon the oath of McGill Grove with Disorderly House, and being convicted and sentenced to be imprisoned Ninety days in Jail, And to pay a fine of Three Hundred Dollars and in being in default to be imprisoned One Hundred & Eighty days in Jail additional to take effect from the date of the arrival of said defendant at the United States Jail of said District of Columbia, "Nunc Pro Tunc" Him therefor safely keep in your said custody until he shall be discharged by due course of law; and for so doing this shall be your sufficient warrant.

Witness the Hon. Ivory G. Kimball and the Hon. Alexander R. Mullowny, Judges of the Police Court of the District of Columbia, and seal of said Court this Twenty Second day of December, in the year of our Lord one thousand nine hundred and Nine.

[SEAL.]

F. A. SEBRING,
Clerk Police Court, D. C.

12

EXHIBIT "B."

Writ of Habeas Corpus.

Filed December 29, 1909.

In the Supreme Court of the District of Columbia.

No. 514.

In the Matter of the Petition for Writ of Habeas Corpus for BENJAMIN LENOVITZ.

The President of the United States to Aulick Palmer, U. S. Marshal, Greeting:

You are hereby commanded to have the body of Benjamin Lenovitz detained under your custody, as it is said, together with the

day and cause of his being taken and detained, by whatever name he may be called in the same, before the Honorable D. T. Wright, one of the Justices of the Supreme Court of the District of Columbia, in Circuit Court No. 1, United States Court-House, City of Washington (immediately), after the receipt of this writ, to do and receive whatever shall then and there be considered of in his behalf, and have then and there this writ.

Witness, The Honorable Harry M. Clabaugh, Chief Justice of said Court, the 22nd day of Dec'r A. D. 1909.

[SEAL.]

J. R. YOUNG, *Clerk,*
By F. W. SMITH,
Assistant Clerk.

13 *Demurrer to Return.*

Filed January 7, 1910.

In the Supreme Court of the District of Columbia.

Habeas Corpus. No. 514.

In re BENJAMIN LENOVITZ.

The Petitioner says: That the Respondent's Return is bad in substance.

CAMPBELL CARRINGTON,
JOHN RIDOUT,
Attorneys for Petitioner.

NOTE.—The matters of law to be argued on this demurrer are: That the Police Court was without jurisdiction to try the cause under the alleged sentence and commitment under which the Respondent justifies, for the reasons set forth in the Petition to which reference is made, and it is made part hereof, and especially because under Section 934 of the Code the prosecution could be conducted only in the Supreme Court of the District of Columbia.

14 *Order Sustaining Demurrer, &c.*

Filed January 7, 1910.

In the Supreme Court of the District of Columbia.

Habeas Corpus. No. 514.

In the Matter of BENJAMIN LENOVITZ.

This cause coming on to be heard upon the return of the respondent and the demurrer thereto of the petitioner having been argued by counsel and considered by the Court, it is, this seventh day of January, A. D. 1910,

Adjudged and ordered: that the said demurrer be, and it is hereby sustained; and the respondent declining to plead further, or to amend, it is further adjudged and ordered that the said petitioner be, and he is hereby discharged from the custody of the said respondent.

——— ———.

From this judgment the respondent, in open court, prays an appeal to the Court of Appeals, and the bond for costs is hereby fixed in the sum of fifty dollars.

WRIGHT, *Justice.*

Memorandum.

January 10, 1910.—Appeal bond for costs approved and filed.

15 *Designation of Record on Appeal.*

Filed January 10, 1910.

In the Supreme Court of the District of Columbia.

Habeas Corpus. No. 514.

BENJAMIN LENOVITZ, Petitioner,
vs.
AULICK PALMER, Marshal of the United States for the District of Columbia, Respondent.

The Clerk of the Court, in making up the record on appeal in this cause, will please include the following papers filed herein:

1. Petition for writ of habeas corpus filed December 22nd, A. D. 1909.
2. Writ of habeas corpus, issued December 22nd, A. D. 1909.
3. Return of Marshal to the writ of habeas corpus, filed December 22nd, A. D. 1909.
4. Return of the respondent, filed December 29th, A. D. 1909.
5. Demurrer of petitioner to return of respondent, filed January 7th, A. D. 1910.
6. Order for discharge, note of appeal, and bond fixed for costs, $50.00, January 7th, A. D. 1910.
7. Appeal bond $50.00 filed January 10th, A. D. 1910.

DANIEL W. BAKER,
Attorney of the United States in and for the District of Columbia,
REGINALD S. HUIDEKOPER.
Assistant Attorney of the United States in and for the District of Columbia,
Attorneys for Respondent.

O. K.
CAMPBELL CARRINGTON,
JOHN RIDOUT,
For Petitioner.

16 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 15, both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 514, Habeas Corpus, entitled Ex Parte: Benjamin Lenovitz, as the same remains upon the files and of record in said court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 26th day of January, 1910.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia Supreme Court. No. 2112. Aulick Palmer, marshal of the United States for the District of Columbia, appellant, vs. Benjamin Lenovitz. Court of Appeals, District of Columbia. Filed Jan. 26, 1910. Henry W. Hodges, clerk.

IN THE Henry W. Hodges.
Lenox.

Court of Appeals, District of Columbia.

JANUARY TERM, A. D. 1910.

No. 2112.

No. 8, SPECIAL CALENDAR.

AULICK PALMER, MARSHAL OF THE UNITED STATES,
APPELLANT,

vs.

BENJAMIN LENOVITZ.

BRIEF FOR APPELLANT.

DANIEL W. BAKER,
Attorney of the United States in and for the District of Columbia.
R. SPRIGG PERRY,
REGINALD S. HUIDEKOPER,
Assistant United States Attorneys.

IN THE

Court of Appeals, District of Columbia.

JANUARY TERM, A. D. 1910.

No. 2112.

No. 8, SPECIAL CALENDAR.

AULICK PALMER, MARSHAL OF THE UNITED STATES,
APPELLANT,

vs.

BENJAMIN LENOVITZ.

Statement of the Case.

An information was filed in the United States branch of the police court of the District of Columbia on October 1, 1909, against the appellee herein. The information alleged that the appellee, Benjamin Lenovitz, had been keeping a disorderly house in violation of law. Lenovitz appeared, pleaded not guilty, and demanded a jury trial. The trial took place on November 12, 1909, and on November 14, 1909, the jury rendered a verdict finding Lenovitz guilty as alleged in the information. After some preliminary motions were disposed of Lenovitz was sentenced on December

14, 1909, to serve a term of six months in the jail of the District of Columbia and to pay a fine of $300. The term of imprisonment imposed by the sentence was subsequently reduced by the court to three months.

On December 22, 1909, an order of commitment was placed in the hands of the marshal by the clerk of the police court, the sentence to take effect upon the arrival of the defendant at the United States jail of the District of Columbia. On the same day, and before the arrival of the defendant at the United States jail, and while the defendant was in the hands of the marshal to be carried to the jail, the said Lenovitz filed his petition for a *writ of habeas corpus* before Mr. Justice Wright in the Supreme Court of the District of Columbia. The return to the writ of *habeas corpus* was filed by the marshal on December 29, 1909, and set out the proceedings in the police court, and attached as an exhibit thereto a copy of the commitment from the clerk of the police court of the District of Columbia. Lenovitz was thereupon released on bail, and a demurrer was filed by the respondent to the marshal's return. On January 7, 1910, Mr. Justice Wright filed an order sustaining the demurrer and discharging the defendant, Lenovitz, from the custody of the United States marshal. Thereupon an appeal was noted in open court to the Court of Appeals on behalf of the United States marshal.

Assignment of Errors.

1. The Supreme Court of the District of Columbia erred in holding that the police court of the District of Columbia was without jurisdiction to hear a case arising upon an information alleging the keeping of a disorderly house.

2. The Supreme Court of the District of Columbia erred in discharging Benjamin Lenovitz from the custody of the United States marshal.

ARGUMENT.

Constitutionality of Act Creating Police Court.

In section 42 of the Code of the District of Columbia and the sections immediately following there is found the provision of law relative to the constitution and jurisdiction of the police court. The court has original jurisdiction, concurrently with the Supreme Court of the District, of all crimes and offenses not capital or otherwise infamous and not punishable by imprisonment in the penitentiary. These provisions in general are a re-enactment of existing laws relative to the police court. Prior to the passage of the code the acts conferring jurisdiction upon the police court are to be found in section 1049 *et seq.*, Revised Statutes of the District of Columbia, and Compiled Statutes of the District of Columbia, page 479. By the act of March 3, 1891, 2 Supplement Revised Statutes of the United States (second edition), 911, a jury was provided in the police court. This provision for a jury was made necessary by the opinion of the Supreme Court of the United States in the case of Callan *vs.* Wilson, 127 U. S., 540.

The police court was created by virtue of that plenary legislative power which Congress exercises over the District of Columbia. Employers' Liability Case, 207 U. S., 500. From the earliest times the propriety of creating a minor court to try petty offenses has been recognized. In many cases which have arisen in this District questions involving the police court have been considered, and in no case has there been a decision by any of our courts throwing any doubt upon the power of Congress to create a police court to try petty offenses.

In the case of Callan *vs.* Wilson, 127 U. S., 556, the question was raised of the jurisdiction of the police court, but the question related to a jury trial. The Supreme Court of

the United States in that case recognized a general principle of law that a minor court could be created by Congress to try petty offenses, but held that in certain classes of cases defendants in the police court of the District of Columbia were entitled to a jury trial.

In the case of Latney *vs.* United States, 18 App. D. C., 266, there was brought into question the constitutionality of the police court, under article 4 of the amendments to the Constitution of the United States. In this case the defendant had been tried and convicted in the police court of the crime of petty larceny, and the record of the police court showing this conviction was introduced in evidence in a subsequent trial in the Supreme Court of the District of Columbia. The Supreme Court of the District of Columbia held that the police court had jurisdiction over the crime of petty larceny when it came before it for the first offense, and permitted the prior conviction of the defendant to be shown from the record of the police court.

De Forest *vs.* United States, 11 App. D. C., 458.
In re Fry, 3 Mackey, 135.
Harris *vs.* Nixon, 27 App. D. C., 94.

In the case of The United States *vs.* Mills, 12 App. D. C., 506, this court held that the police court of the District of Columbia was a court of the United States in one sense of the term, although not a Federal court within the full meaning of the Constitution.

Congress has express power to exercise exclusive legislation in all cases whatever in the District of Columbia, thus possessing the combined powers of a Federal and of a State government in all cases where legislation is possible.

Stoutenburgh *vs.* Hennick, 129 U. S., 147.
Loughborough *vs.* Blake, 5 Wheaton, 317.

Police Court Has Jurisdiction Over Offense of Keeping a Disorderly House.

The jurisdiction of the police court is provided for in section 43 of the Code of the District of Columbia, and is confined to those crimes and offenses which are not capital or otherwise infamous and are not punishable by imprisonment in the penitentiary.

In the present case the information in the police court charged the keeping of a disorderly house by the defendant on the day mentioned. There is no specific act of Congress covering the keeping of a disorderly house, but resort has to be had to those laws in force in the District of Columbia at the time the Code went into effect which are not repealed by this Code. By section 1 of the Code we find that the common law and all British statutes in force in Maryland on February 27, 1801, are continued in force, except in so far as they are inconsistent with the provisions of the Code. Section 1636 of the Code, in the fifth paragraph, provides that those penal statutes imposing punishments of fine only, or of imprisonment not exceeding one year, or both, are still continued in force. The keeping of a disorderly house was an offense at common law, and, there being no statute on the subject, the common law in regard to the subject is in force in this jurisdiction.

In the case of De Forest *vs.* United States, 11 App. D. C., 458, there was an information filed in the police court charging the defendant with keeping and maintaining a bawdy house. It was contended in that case, as at the case at bar, that there was no statute covering this offense, and that there was no such offense in the District of Columbia. In affirming the action of the police court in convicting the defendant the Court of Appeals said:

> "The case of King *vs.* The People (83 N. Y., 587) was, like the present case, a prosecution for keeping

Common law in force,
Hill v. US. 22 App. D.C. 401
Tyner v. US 23 id - 359.

a bawdy house; and there the Court of Appeals of the State of New York said: 'The keeping of a common bawdy or gambling house constitutes the house so kept a disorderly house, and an indictable offense at common law. It is a public offense for the reason that its direct tendency is to debauch and corrupt the public morals, to encourage idle and dissolute parties, and to disturb the public peace. It is not an essential element that it should be so kept that the neighborhood is disturbed by the noise, or that the immoral practices should be open to public observation.' See also to the same effect the cases of Cheek *vs.* Commonwealth, 79 Ky. 359, and Thatcher *vs.* State, 48 Ark., 60."

* * * * * * *

(P. 465:) "At the time of the cession of the Territory of Columbia by the State of Maryland to the Federal Union, its law, as well as that of the rest of the States, was the common law of England, both civil and criminal, so far as that common law was suited to our condition and was unaffected by statute. And with the common law the State of Maryland had adopted a considerable part of the statute law of England. When by the act of February 27, 1801 (2 Stat., 103), the Congress of the United States finally accepted the cession and assumed jurisdiction over the ceded District, it was specifically provided 'that the laws of the State of Maryland, as they now (then) exist, shall be and continue in force in that part of the said District which was ceded by that State to the United States and by them accepted.' This express enactment, if any such enactment was needed at all, was amply sufficient to continue in force and to perpetuate to the present day in the District of Columbia the common law of England as it existed in Maryland at that time, with all the existing statute legislation of the State and all the statute legislation of England that had been adopted by Maryland. And upon that theory of the law we have been conducting our affairs for nearly a hundred years."

In an early case in this jurisdiction, that of United States *vs.* Marshall, 6 Mackey, D. C., 35, there was an information charging the defendant in the police court with keeping a bawdy house. In affirming the action of the police court in convicting the defendant the court held:

> "The information charged the defendant with keeping a bawdy house. In this District keeping a bawdy house is a common law, not a statutory, offense; and the punishment, as in other cases where it is not fixed by statute, is fine or imprisonment, or both, at the discretion of the court. 1 Bish. Crim. Law, 940; Whart. Crim. Pr. & Pl., 919; U. S. *vs.* Coolidge, 1 Gall., 493; Republica *vs.* De Longchamps, 1 Dall., 111; *Re* Jackson, 96 U. S., 727.
>
> "Keeping a bawdy house is distinctly recognized by our statute law to be a criminal offense, although, as first stated, no law in force here expressly fixes the penalty. See Secs. 402, 403, R. S. D. C."

The keeping of a bawdy house has been recognized as a common-law offense by the courts of the State of Maryland and by various other authorities.

Herzinger *vs.* State, 70 Md., 278.
Henson *vs.* State, 62 Md., 231.
3 Greenleaf's Evidence, section 184.
2 Wharton's Criminal Law, section 2392.

The jurisdiction of the police court in this case was attacked by the defendant on the ground that two sections of the Code took away from the police court the jurisdiction to hear and try a case involving the keeping of a disorderly house. One of these sections is section 910, D. C. Code, which is as follows:

> "Whoever shall be convicted of any criminal offense not covered by the provisions of any section of this code, or of any general law of the United States not locally applicable in the District of Columbia,

shall be punished by a fine not exceeding one thousand dollars or by imprisonment for not more than five years, or both."

The other section to which reference is made by the defendant is section 934, D. C. Code, which provides:

> "When any person shall be sentenced to imprisonment for a term not exceeding six months the court may direct that such imprisonment shall be either in the work-house or in the jail. When any person is sentenced for a term longer than six months and not longer than one year, such imprisonment shall be in the jail, and where the sentence is imprisonment for more than one year it shall be in the penitentiary. Cumulative sentences aggregating more than one year shall be deemed one sentence for the purposes of the foregoing provision. When the punishment of an offense may be imprisonment for more than one year the prosecution shall be in the Supreme Court of the District. When the maximum punishment is *a fine only or* imprisonment for one year or less the prosecution may be in the police court."

Interpretation of Code.

In considering the Code of the District of Columbia, there is a general rule of interpretation which is well recognized to be of controlling importance. This rule is that upon a revision of a statute, a different meaning is not to be given the wording of that statute unless there has been some substantial change in the phraseology of the new law.

> "Upon a revision of statutes, a different interpretation is not to be given them, without some substantial change of phraseology—some change other than what may have been necessary to abbreviate the form of the law."
>
> Justice Bradley in McDonald *vs.* Hovey, 110 U. S., 628.
>
> United States *vs.* Ryder, 110 U. S., 740.

This general principle of law was recognized in a criminal case in which the defendants were indicted under sections 5508 and 5509, R. S. U. S., relating to conspiracy and murder in the prosecution of the conspiracy. In the case of Logan *vs.* United States, 144 U. S., 302, the court held:

> "It is not to be inferred that Congress, in revising and consolidating the statutes, intended to change their effect, unless an intention to do so is clearly expressed."

The acts conferring jurisdiction upon the police court prior to the time when the Code went into effect are to be found in section 1049, R. S. D. C., Compiled Statutes of the District of Columbia, 479. Upon consideration of these acts, we find that they are almost in terms identical with section 43 of the Code. There has been no material change in the wording of the law conferring jurisdiction upon the police court. Hence, under the rule of construction above laid down, there was no change intended in the minds of the legislators when they passed that provision of the Code conferring jurisdiction upon the police court in the terms of the prior law. Therefore, so far as the jurisdiction of the police court is concerned, as provided for in section 43 of the Code, we have the same law which existed at the time the Code went into effect. There is no phraseology in this section of the Code which denotes a substantial change in the law, and there has been no change other than what may have been necessary to abbreviate the form of the law. The police court had jurisdiction over the offense of a disorderly house prior to the Code, and, there being no change, still has jurisdiction.

Section 934, District of Columbia Code.

The contention is made that section 934 of the Code takes away the jurisdiction of the police court over offenses which were misdemeanors at common law. At common law misde-

meanors were not punishable for any fixed and determinate duration. It is said that this section of the Code, which provides for the imprisonment in the penitentiary of those persons sentenced for a term longer than a year, takes away from the police court jurisdiction over common-law misdemeanors.

In the first place, this section does not deal with the jurisdiction of the police court. That this section of the Code is not intended as an act relating to the jurisdiction of the police court is made plain by the title of the section itself, which is *"Place of Imprisonment."* Turning now to the title of the chapter, we find that chapter 20, under which this section appears, is entitled *"Criminal Procedure."* This section, then, in no way relates to the jurisdiction of the police court, and it was not intended by Congress that such a section, providing for the place of confinement of a convicted criminal and for the method of procedure in the criminal courts, should be effective to take away the jurisdiction of the police court.

The title to an act may be considered in considering that act when there is any doubt as to the meaning of the law.

Chief Justice Marshall in United States *vs.* Fisher, 2 Cranch (U. S.), 386.

Chief Justice Marshall in United States *vs.* Palmer, 3 Wheat., 610.

In the next place, this section could not, in any view of the case, take away jurisdiction from the police court. At common law no misdemeanor was punishable by imprisonment in the penitentiary. All were punished by confinement in jail only. If, then, there are any common-law misdemeanors in force in this District, they must be punishable as at common law—that is to say, by imprisonment in jail. And over all offenses punishable by only a jail sentence the police court has jurisdiction. Hence, the police court has jurisdiction over this common-law misdemeanor of keeping a disorderly house.

The fallacy of this argument that section 934 of the Code takes away jurisdiction from the police court lies in the fact that the parties using it lose sight of the proper effect of the duration of a sentence. Congress can at any time change the punishment of a common-law misdemeanor and still leave that offense as much a misdemeanor in our law today as it was at common law. In the case at bar even if the sentence in a common-law misdemeanor is confined to imprisonment in jail for a year, that statute does not change in any respect the nature of the crime itself, but only changes the punishment. However, if Congress makes the misdemeanor infamous, another rule might apply. It is a well-recognized principle of law that the crime and the punishment for the crime are two separable and distinct entities, which can be separated by the legislature and can be distinguished.

Both of these arguments were made in the case of the United States *vs.* Marshall, 6 Mackey, D. C., 34. There it was argued that at common law a misdemeanor was not punishable by any fixed and determinate sentence, but was punishable in the discretion of the court. Referring to section 5541, Revised Statutes of the United States, it was argued that when an offense was punishable by a greater term than one year the court or the Attorney General could fix the place of punishment, which might be either in the jail or in the penitentiary. The argument was then made that as this common-law misdemeanor of keeping a bawdy house might be punishable in the penitentiary, under their argument it could not be tried in the police court. The information in this case had charged the defendant with keeping a bawdy house, and he had been convicted and sentenced to jail in the police court. The court held:

> "The question remaining is whether the offense of keeping a bawdy house is punishable by imprisonment in the penitentiary. If so, then clearly, by

reason of the section of the statute relating to the jurisdiction of the police court, above quoted, the police court would have no jurisdiction of the offense. *By the common law misdemeanors are punishable by fine and imprisonment in the jail only, and the duration of the imprisonment is at the discretion of the court.*

* * * * * * *

"An impression seems to have prevailed that the police court, by the provisions of this statute and of the act of July 12, 1876, 19 Stat. at L., 88, authorizing the Attorney General of the United States, among other things, to designate the jails and penitentiaries to which persons may be sentenced by the courts of the United States, and to change the place of imprisonment, under certain circumstances, is deprived of jurisdiction in all cases where the imprisonment may be for more than one year. And this because it has been claimed that the effect of these statutes is to require that all sentences to imprisonment for more than one year must be to confinement in the penitentiary and not a jail. These impressions do not seem to be justified by any language found in these statutes. It was not the purpose of Congress by this legislation to change the jurisdiction of any court as to any class of crimes or offenses, or to change the punishment theretofore attached to any crime or offense, but to regulate and fix the places of punishment whether the sentence be to the jail or penitentiary. By no just construction can it be held that the Attorney General is given the power to change the sentence of a court from the jail to the penitentiary, or to order that a prisoner sentenced to the former shall be confined in the latter. He may, under the conditions stated in the act of July 12, 1876, remove a prisoner from one jail to another or from one penitentiary to another.

* * * * * * *

"We have already seen that the act of Congress, authorizing the Attorney General to arrange for places of imprisonment, and section 5541, R. S. U. S., do not affect the punishment of common-law offenses;

hence, they do not affect the jurisdiction of the police court under section 1049, R. S. D. C.

"The only ground assumed for the decision in the Buell case, at all tenable, was that as the punishment might be imprisonment for more than one year in the penitentiary, the police court had, therefore, no jurisdiction, that court being expressly limited to a class of cases not punishable in the penitentiary. But as we have already seen there is no authority for saying that for any common-law misdemeanor except where the statute has so expressly provided, the offender upon conviction, may be sentenced to imprisonment in the penitentiary for any period of time whatever. Neither is there anything in the legislation of Congress limiting the power of the police court in such a case to sentencing the offender to imprisonment in the jail for a period not exceeding one year. The jurisdiction given to the police court by section 1049, R. S. D. C., remains unimpaired."

Compare—

U. S. *v.* Cross, 1 MacArthur, 149.
U. S. *v.* Brady, 1 Mackey, 588.

In the case at bar the act conferring jurisdiction over the police court, namely, section 43 of the Code, is in terms identical with the law then under consideration—that is, with section 1049, Revised Statutes of the District of Columbia. In this, as in the Marshall case, we contend that at common law, misdemeanors being punishable by fine and imprisonment in the jail only, are now punishable, as at that time, by the police court. In the case at bar, as in this Marshall case, we contend that it was not the purpose of Congress to take away jurisdiction from the police court by a section of the Code relating to the place of confinement. *

Section 910, District of Columbia Code.

Section 910 of the Code has no application to any offenses which were cognizable in the police court at the time of the adoption of the Code. The wording of this section itself re-

* Ex parte Garrison 36 W. Va 688.
State v. Peterson, 41 Vt. 511
Mg v. Coolidge, 1 Gall. 493.
Russell Crimes (9th ed) 79

fers to those criminal offenses which are specially provided for by the provisions of any section of the Code, or of any general law of the United States not locally inapplicable to the District of Columbia. It does not appear from a reading of this section that Congress intended that the punishment to be inflicted was intended to cover common-law offenses. The question resolves itself into whether Congress intended to take away the jurisdiction of the police court over common-law offenses conferred upon it by section 43 of the Code by the general provision of section 910. These words, taken in their broadest and most literal sense, would cover not only those specific offenses provided in the Code and the laws of the United States, but would cover all common-law offenses as well.

It is, however, a well-settled principle of law that where the words of a statute, taken in their literal sense, include cases which it was evidently the intention of the law-makers should not be so included the law is to be construed to restrain the operation of the general provision within the narrower limits to carry out the intention of Congress.

Chief Justice Taney, in 1840, laid down this rule most clearly in the case of Brewer *vs.* Blougher, 14 Peters, 197:

> "It is, undoubtedly, the duty of the court to ascertain the meaning of the legislators from the words used in the statute and the subject-matter to which it relates; and to restrain its operations within narrower limits than its words import, if the court are satisfied that the literal meaning of its language would extend to cases which the legislator never designed to impress in it."

This rule of law, as thus laid down, has been followed by the Supreme Court of the United States in numerous cases.

> "The rule that every clause in a statute should have effect, and one portion should not be placed in antagonism to another, is well settled; and it is also held that it is the duty of the court to ascertain the

> meaning of the legislature from the words used and the subject-matter to which the statute relates, and to restrain its operation within narrower limits than its words import, if the court is satisfied that the literal meaning of its language would extend to cases which the legislature never intended to include in it."
>
> Petri *vs.* Commercial National Bank, 142 U. S., 650.

This rule of construction is applicable to penal statutes as well as to civil cases.

In the case of Wade *vs.* United States, 33 App. D. C., 29, we find in the reporter's notes the following:

> "1. The intention of the legislator must govern in the construction of penal as well as other statutes; and while penal statutes are to be strictly construed, they are not to be construed so strictly as to defeat the obvious intention of the legislature."

This rule is found in the Supreme Court of the United States, in the case of The United States *vs.* N. Y. Central Railroad, 212 U. S., 515, in which the court says:

> "We recognize the rule which is laid down in the cases cited by counsel for the defendant in error, that criminal statutes are not to be enlarged by construction, and that a crime must be clearly defined in the terms of the act before it can be held to be embraced within its provisions. But while this is true, criminal statutes, like other acts of legislation, are to receive a reasonable construction, with a view to effecting the purpose of their enactment."
>
> Compare United States *vs.* Bitty, 208 U. S., 393.
>
> U. S. *vs.* B. & O. Railroad, 26 App. D. C., 581.

We contend in the case at bar that the police court, since it came into existence, had jurisdiction over petty offenses

and misdemeanors, among which is included the offense of keeping a disorderly house; that it was not the intention of Congress, by section 910 of the Code, to take away from this court that well-recognized class of offenses of which it has had cognizance for so many years. While it may be contended that the literal terms of the section would include that class of common-law offenses over which the police court has had jurisdiction, nevertheless, in considering the statute, this court will look at the evident intention of Congress, and restrain the operation of this section within the narrower limits that its words import.

Summary Jurisdiction of Police Court Extends to Common-law Misdemeanors.

The police court of the District of Columbia was established by the act of Congress of June 17, 1870 (16 Stat. L., 153):

> "There shall be established in the District of Columbia, a court to be called a police court of the District of Columbia, which shall have original and exclusive jurisdiction of all offenses against the United States committed in the District of Columbia, not deemed capital or otherwise infamous crimes, that is to say, of all simple assaults and batteries, and of other misdemeanors not punishable by imprisonment in the penitentiary; and of all offenses against any of the ordinances of the city of Washington, or of the city of Georgetown, or the laws of the levy court of the county of Washington."

And in section 19 of the same act Congress took away from the justices of the peace all jurisdiction which they had up to that time exercised over crimes and offenses committed in the District.

From the earliest times there have been minor courts exercising a summary jurisdiction over petty offenses. Justices

of the peace and conservators of the peace were wisely appointed as the proper judicial tribunal to hear this class of cases. The power of appointing justices of the peace within the province of Maryland was exercised by the *lord proprietor* and those administering the provincial government from the earliest period in the history of the provinces until the Revolution, and the power of making such appointments of justices of the peace was devolved upon the Governor of Maryland by the Constitution of 1776, section 48.

Kilty's Rep., 216.
Alexander's British Statutes, 165-166.
Kilty's Laws of Maryland, act 1768, ch. 29, secs. 16 & 17.
4 Black. Com., 271.
1 Chitty Crim. Law., 139.

In Maryland, prior to the revolution, justices of the peace exercised judicial powers in criminal cases from an early period, as appears in the act of 1717, chapter 13, section 6; act of 1723, chapters 16 and 17; act of 1730, chapter 23, and act of 1748, chapter 19, section 2. These officers were recognized as proper depositories of the judicial power of the State of Maryland by article 4, section 1, of the constitutions of 1850, 1864, and 1867.

Under constitutional provisions similar to those of Maryland, justices of the peace have summary jurisdiction in many States to try persons for petty offenses, for assaults and batteries, and for the offense of petty larceny. This is the case in Virginia, Maine, Rhode Island, Massachusetts, Pennsylvania, Wisconsin, and other States.

In Maine a justice may commit vagabonds to the house of correction (Rev. Stat. 1871, p. 918), in New Jersey he may commit disorderly persons to the workhouse (Rev. Stat., p. 306), in Pennsylvania he may convict and sentence tramps, as guilty of a misdemeanor, to the jail or workhouse (act of 1879, No. 31). In West Virginia he had concurrent

jurisdiction with the circuit and county officers of all offenses when the punishment is limited to a fine not exceeding ten dollars, or to imprisonment not exceeding ten days (Revised Statutes 1879, p. 718). In Iowa he may try all offenses less than felonies, when the punishment does not exceed one hundred dollars as a fine, nor more than thirty days as an imprisonment (Code 1873, p. 717). In Illinois he has original jurisdiction in all cases of misdemeanors punishable by fine only, when the fine does not exceed two hundred dollars, and may commit vagabonds (Rev. Stat. 1877, pp. 400 and 388). In New York he may commit vagrants for six months, and disorderly persons (Rev. Stat., pp. 836, 837 and 893). In Connecticut he may convict for offenses punishable by a fine of not more than seven dollars, or by imprisonment for not more than thirty days (Gen. Rev. 1875, p. 532).

The above list of cases is set out in the brief of the State in the case of State *vs.* Glenn, 54 Md., 584.

In the leading case of Hurtado *vs.* California, 110 U. S., 516-524, it was contended that an indictment or presentment by the grand jury was essential to due process of law not only in cases of felonies, but in all cases of misdemeanors and petty offenses as well. The Supreme Court, however, held that the method of proceeding in a summary manner was one well known to the common law in the case of petty offenses and misdemeanors, and that no such formal proceeding was necessary, as in the case of felonies.

Through a long course of legislation and judicial interpretation, the English and American laws recognized the justice and wisdom of summary courts to try petty offenses. Congress, at the time of the passage of the Code, was well acquainted with the history of legislation in regard to courts exercising summary jurisdiction, and with the needs of society for protection of this nature against the vicious and disorderly portion of its members. The impossibility of for-

mally trying disorderly persons upon an indictment or presentment by a grand jury, and disposing of the cases with expedition, was also well known to the lawmakers.

The leading case of State *vs.* Glenn, 54 Md., 572, arose in very much the same way as the case at bar. In this case there was an information against one Mary Glenn, charging her with being habitually a disorderly person, and leading a dissolute and disorderly course of life. Upon trial and examination the party was convicted before a justice of the peace, acting as a police justice in the city of Baltimore, and sentenced to the Maryland house of correction for the period of six months. After her incarceration a writ of *habeas corpus* was issued, and she was brought before one of the judges of the third judicial circuit of the State. One of the questions involved was whether the legislature could constitutionally confer summary jurisdiction upon a justice of the peace to try and convict a party for the offense of leading a dissolute and disorderly life. It was contended that under the particular wording of the constitution of the State, persons accused of any offense, whether a felony or a misdemeanor, were entitled to a jury trial, and that as the law appointing the justices of the peace did not provide for a jury trial, such law was in violation of the constitution. After an exhaustive opinion, in which the history and course of summary courts were traced, the Court of Appeals of Maryland, on page 604 of its opinion, held:

> "The framers of all our constitutions were well acquainted with the history of legislation in regard to the exercise of summary jurisdiction, both in England and in this State, and of the needs of society for summary protection against the vicious, idle, vagrant and disorderly portion of its members; and it is difficult to suppose that, by any provision incorporated in those instruments, it was intended to nullify previous legislation, altogether interdict the use of a long and well-established summary jurisdiction for the protection of society, and thus radically change

State v. Peterson 41 Vt. 511

and seriously impair the whole police system of the State. For if offenders of the class embraced in the act of 1878, ch. 415, sec. 10, could only be reached by formal indictment and trial by jury in the criminal courts of the State, the formality and delay attending that mode of proceeding would either operate as an immunity to that class of offenders, or an oppression of them in many cases. The parties affected are most generally of the transient pauper class, and if committed for trial, the larger portion of them, not being able to furnish bail, would have to remain in close confinement in the jails, until the time of trial; and this confinement might, and in the countries where courts are held but twice or three times a year, frequently would, extend to a period greater than that for which they could be consigned to the house of correction on conviction. This mode of procedure, therefore, would not only prove oppressive in a great many cases to the parties arrested, but it would be exceedingly onerous to the public in the large expense attending the prosecutions. And as to the danger of oppression from erroneous summary conviction, all that is removed by the very ample means of relief provided by law."

Cited with approval in—

Lynn *vs.* State, 84 Md., 81.
Danner *vs.* State, 89 Md., 220.

A similar question was raised in the case of Shafer *vs.* Mumma, 17 Md., 331, where the question involved was whether the mayor of Hagerstown had authority, under the Constitution, to summarily try bawdy-house cases and disorderly cases. The defendant was convicted of being a lewd woman and a public prostitute, and the case was heard on appeal before the Court of Appeals of Maryland. At page 336 the court says:

> "It would be next to, if not quite impossible, for a large city like Baltimore to preserve order within its limits, preserve the streets free from interruption,

> indeed to do most of the thousand things necessary to be done, to carry on its various and indispensable operations, if in every case it was a necessary preliminary that the offender should be regularly prosecuted by presentment, indictment and trial. It has always been understood that under the police power, persons disturbing the public peace, persons guilty of a nuisance, or obstructing the public highways, and the like offenses, may be summarily arrested and fined, without any infraction of that part of the Constitution which apportions the administration of the judicial power, strictly as such."

In the words of the Court of Appeals of Maryland, it is difficult, in the absence of any express provision of the law, to suppose that Congress, in passing section 910 of the Code, intended to nullify previous legislation and altogether interdict the use of a long and well established summary jurisdiction for the protection of society, and thus radically change and seriously impair the whole police system of the District of Columbia. If offenses of the nature involved in the case at bar can only be reached by a formal indictment and trial by jury in the Supreme Court of the District of Columbia, the formality and delay attending that mode of procedure would either operate as an immunity to that class of offenders or an oppression of them in many cases. In many instances the parties involved are of the transient pauper class, and if committed for trial many of them would not be able to furnish bail, and would have to remain in close confinement in the jail until the time of trial. Even at the present time the jail of the District of Columbia is grossly overcrowded, and the hardships imposed upon this class of persons awaiting trial would be enormous. Not only would the proceeding be oppressive in the extreme, but it would be exceedingly burdensome to the public purse, and even in the trial of the cases would be attended with large expense.

The principal common-law offenses which would be affected by a decision adverse to the Government in this case would be those of, first, keeping a disorderly house; second, bawdy house; third, affrays, and fourth, threats. All of these cases are now prosecuted as common-law offenses in the police court, and during the past year there were, roughly speaking, three hundred cases disposed of in which these various offenses were involved. The total number of cases disposed of in the Supreme Court of the District of Columbia, holding a criminal term, for the past year amounted to less than four hundred. It is thus apparent what an enormous increase there would be in the cases handled by the Supreme Court of the District of Columbia. Such a state of affairs might well lead to the remark that the formality and delay attending this mode of procedure would either operate as an immunity to this class of offenders or an oppression of them by keeping them in jail awaiting trial.

Construction of Code.

Section 43, conferring jurisdiction upon the police court, establishes firmly in the tribunal jurisdiction over offenses involving the question of a disorderly house and the similar offenses. This jurisdiction is attempted to be taken away from the police court, not by any subsequent act of legislation on the part of Congress, but by a reference to another section of that very law which gives the police court this jurisdiction. It is a well-settled principle that a code or a body of revised laws should be regarded as a system of contemporaneous acts established by one decree or as a simultaneous expression of the law-maker (Groff *vs.* Miller, 20 App. D. C., 357). The intention of the law-maker must govern, and if it is evident that the two sections of the Code can be considered together so as to effectuate the intention of Congress, such a construction must prevail. The latest sec-

tion of the Code cannot be used to strike out the preceding section.

In the case of Iglehart *vs.* Iglehart, 204 U. S., 478, the Supreme Court of the United States had under consideration two sections of the Code seemingly in conflict with each other. Section 669 of the Code provided, in substance, that it should be lawful for cemetery associations incorporated in the District of Columbia to take and hold any ground, etc., upon condition that they apply the income thereof according to the terms of such grant. Section 1023 of the Code provided that, except in the cases of gifts or devises to charitable uses, every future estate should be void in its creation which suspends the absolute power of alienation of the property for a longer period than during the continuance of not more than one or more lives in being and twenty-one years thereafter. The court said, on page 484:

> "The appellants assert that section 669 is nullified by section 1023. They urge that the last section, being the last expression of the legislative will, and being inconsistent with section 669, the last section must prevail. This, although section 669 makes special provision in regard to trusts of this nature and permits their creation, yet because the latter section does not in terms make exception of the trusts provided for in the earlier section, these trusts, it is urged, are thereby prohibited.
>
> "This is not a case for the application of that doctrine, which is in any event very seldom applicable. The true rule is to harmonize the whole Code, if possible, and to that end the letter of any particular section may sometimes be disregarded in order to accomplish the plain intention of the legislature. Effect must be given to all the language employed, and inconsistent expressions are to be harmonized to reach the real intent of the legislature. Petri *v.* Commercial National Bank, 142 U. S., 644, 650; Bernier *v.* Bernier, 147 U. S., 242, 246; Groff *v.* Miller, 20 App. D. C., 353, 357. These two sections can be easily harmonized, and the undoubted intention of

> the legislature be thus carried out, by considering the latter section as applying to cases other than those specially provided for in section 669. That section must be regarded as in full force."

In this case the Supreme Court of the United States held that the literal wording of section 1023 of the Code was to be limited by a reference to section 669, and that the undoubted intention of Congress should be carried out and these two sections harmonized and each section construed in full force.

In the case of *Bernier v. Bernier,* 147 U. S., 242, the Supreme Court of the United States had under consideration the construction of sections 2291 and 2292 of the Revised Statutes of the United States, relating to the acquiring of a patent under the homestead entry law. It appears from the statement of the case that one Edward Bernier made a homestead entry on the land in controversy, and died leaving children, some of whom were adults and some of whom were minors. Upon the strict construction of the law contended for by counsel for the minor children, the minor heirs alone would be entitled to secure a patent from the Government for the homestead which their father had entered upon. This was the construction of the law by the Supreme Court of the State of Michigan.

The Supreme Court of the United States, however, adopted a different view of the law. After considering these sections of the Revised Statutes, they held that they embodied only the provisions of prior acts of Congress, and that they were to be construed in connection with the intent of the lawmakers.

> "We are of the opinion that the construction claimed by the complainants is the true one. Section 2291 provides that the certificate and patent, in case of the death of father and mother, shall, upon the proofs required being made, be issued to the heirs of the deceased party making the entry, a provision

which embraces children that are minors as well as adults. Section 2292, in providing only for minor heirs, must be construed not as repealing the provisions of section 2291, but as in harmony with them, and as only intended to give the fee of the land to the minor children exclusively when there are no other heirs. This construction will give effect to both sections; and it is a general rule, without exception, in construing statutes, that effect must be given to all their provisions if such a construction is consistent with the general purposes of the act and the provisions are not necessarily conflicting. All acts of the legislature should be so construed, if practicable, that one section will not defeat or destroy another, but explain and support it. When a provision admits of more than one construction, that one will be adopted which best serves to carry out the purposes of the act. The object of the sections in question was, as well observed by counsel, to provide the method of completing the homestead claim and obtaining a patent therefor, and not to establish a line of descent or rules of distribution of the deceased entryman's estate."

Bernier *vs.* Bernier, 147 U. S., 242.

In the present case we contend that section 910 of the District of Columbia Code was not intended as an act taking away from the police court jurisdiction over the class of offenses embraced in the information in this case. The object of that section was to provide for punishment of those offenses which were not covered by the sections of the code. The Supreme Court of the United States, in considering the case just above cited, held that the acts of the legislature should be construed so as to explain and support each other. In the present case the Code was primarily a codification of the laws of the District of Columbia as they had existed at the time the Code went into effect. With this in mind and in view of the fact that the matters embraced in the information in the present case were of a petty nature, we contend

that the meaning of Congress is best obtained by considering section 910 as referring only to the more serious offenses.

The object of section 910 relates to those offenses which are cognizable in the Supreme Court of the District of Columbia, and is not intended to take away the jurisdiction of the police court over these petty common-law offenses.

> "We are not at liberty to construe any statute so as to deny effect to any part of its language. It is a cardinal rule of statutory construction that significance and effect shall, if possible, be accorded to every word."
>
> Market Co. *vs.* Hoffman, 101 U. S., 112 and 116.

In the case of Gwinn *vs.* Brown, 21 App. D. C., 296, this court had under consideration sections 111 and 1265 of the Code. There was an apparent conflict between these two sections, but this court, after reviewing the prior legislation on the subject, held that one section must be read as an exception to the more general provisions of the other section.

> "4. There being an apparent conflict between section 111 and section 1265, Code, D. C., as to the extent of the principal limitations of actions, and also as to the extent of savings to parties under disability in order to give effect to both sections, section 111 being a re-enactment of the act of Congress of March 3, 1899, for the perfection in equity to titles to land acquired by adverse possession, must be read as an exception to the more general provision contained in section 1265, limiting the period within which actions can be brought to recover land."
>
> Gwinn *vs.* Brown, 21 App. D. C., 295.

This case is of great importance to the present discussion, on two grounds. In the first place, where the two sections of the Code appear to be in conflict, they are to be harmonized so that the narrower section may be read as an exception to the general provisions of the other section. In the second

place, this case is of importance in that one of these sections in apparent conflict is construed with reference to the prior law which was in effect at the time. This prior law was the Statute of 21 James I, and was adopted in this country at the time of the Revolution.

In the case of Groff *vs.* Miller, 20 App. D. C., 354, there was under consideration sections 82 and 226 of the Code of the District of Columbia. The court held, however, that the apparent conflict and difficulty occurring out of the adverse language employed in these two sections might be removed, and the sections made consistent by the application of the well-established rules of constructions of statutes. In the course of its opinion, the court held, on page 357:

> "It would seem to be well settled that a code, or body of revised laws, should be regarded as a system of contemporaneous acts, as established *uno flatu;* or as a simultaneous expression of the law maker. Its various sections relating to the same subjects should, if practicable, be construed together as one act or chapter, or as continuous sections of the same act; and one chapter is to be read with another relating to the same object, as one body of law, without collecting from independent laws the previous enactments originally passed at different times, and re-enacted by a revisor.
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> "Its general system of legislation upon the subject-matter should be taken into view, and any particular article construed in conformity therewith, unless an intention to depart from it be clearly shown; and definitions contained in it are to be construed with reference to its positive enactments in *pari materia.* Endlich on Interpretation of Statutes, section 40, and cases there cited.
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> "The real intention, when accurately ascertained, will always prevail over the literal sense of the terms. When the expression in a statute is special or particu-

lar, but the reason is general, the expression should be deemed general.

"If the words in section 226, instead of being read as applying to appeals strictly, as such, from justices of the peace, be read as applying to judicial orders or judgments in any case upon return of *certiorari* by or from a justice of the peace, the apparently conflicting provisions of sections 82 and 226 would be made to harmonize and be rendered consistent, the one with the other, and would conform throughout with the general scheme of the statute relating to civil actions brought before justices of the peace. And this, we think, is the fair and rational construction to be placed upon the terms employed in section 226; as thereby all the provisions of the act relating to this subject are given full effect and operation, and none rendered null and of non-effect, by reason of the apparent conflict between sections 82 and 226, such as would be the case if the contention of the present appellant was sustained."

Groff *vs.* Miller, 20 App. D. C., 353.

other. By the expressed provisions of section one the com-

In the case at bar all of the sections of the Code are to be construed together so as to harmonize the one with the mon law is in force in the District of Columbia. By section 1636 it is evident that Congress did not intend to repeal any of those laws relating to the punishment of petty offenses. By section 43 the jurisdiction of the police court is provided for in terms as in former laws. Under the decisions above quoted this would convey to the police court the same jurisdiction which they exercised prior to the adoption of the Code. Section 934 of the Code could not be held to affect section 43 in any way, because it relates solely to the place of confinement of the convicted criminal. (In so far as section 910 is in conflict with this former provision of the Code, namely, section 43, it must be harmonized so as to give that construction to the law which will best subserve the intention of the legislature.)

Conclusion.

We contend in the present case that the decree appealed from should be reversed and the defendant remanded to the custody of the United States marshal, to be conveyed to the District jail. Throughout a long period of the history of the English law, and ever since the foundation of our judicial system, summary courts have dealt with petty offenses, such as disorderly houses and the like. This is a well-recognized branch of criminal procedure, and tends to that speedy justice which the framers of the Constitution of the United States so clearly desired. An interpretation of any of the sections of this Code which would take away from the police court these cases of disorderly houses and the like would work immense harm in the District of Columbia, not only to the offenders themselves, but also by an increased expense in the trial and conviction of petty offenders. Such an interpretation of the law should not be made in the absence of a clear and plain expression by Congress. We must consider the law as it now exists until Congress has by statute plain and without doubt taken away from the police court that jurisdiction which it has so long exercised with dignity and with favor to the community.

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